

SPECIAL CIVIL APPLICATION No 5426 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?
No

COMMISSIONER OF POLICE

Ms.Siddhi Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer is for quashing the detention order dated 26.5.1998 passed by the Police Commissioner, Ahmedabad City, under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short "PASA"), by issuing a writ of certiorari with further prayer for issuing writ of habeas corpus for immediate release of the petitioner from illegal detention.

2. Brief facts are that the Commissioner of Police, Ahmedabad City, entertained subjective satisfaction from three registered cases under various sections of the Indian Penal Code, details of which are given in the grounds of detention and further from the statements of two confidential witnesses that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and his activities were prejudicial for maintenance of public order. Accordingly the impugned order was passed which is under challenge in this writ petition.

3. Only two grounds were pressed to assail the detention order.

4. The first ground has been that the representation of the detenu sent through his Advocate on 7.7.1998 was not considered by the State Government; rather it was returned to the Advocate of the detenu on technical ground that the representation was not accompanied with Vakalatnama or authority letter from the petitioner nor there was signature or thumb impression of the detenu on this representation. It was contended that this representation remained unconsidered so far which has rendered the detention of the petitioner and continued detention illegal. Learned A.G.P., on the other hand, pointed out that two representations were made, one on 8.6.1998 by the detenu which was rejected expeditiously on 10.6.1998 by the State Government and the second representation dated 7.7.1998 was returned because it was found to be defective. It has been contended by her that if successive representations were made by the detenu, either personally or through advocate, such successive representations could not be considered unless fresh grounds were disclosed in subsequent representation. It was also contended that if the first representation was

expeditiously disposed of the same expedition was not expected from the State Government in dealing with the second representation. Reference was made to the case of Bachhrajji Biharilal Pitaliya v/s. District Magistrate, reported in 1994 (1) GLR 834 (at Page 860). What has been held in this case is quite different. Firstly it was laid down that there is no obligation on the authority to consider successive representations unless new facts and circumstances are brought to the notice of the authority or unless supervening and subsequent facts calling for revocation of order of detention are brought to the notice of the authority. The second observation was that there is no constitutional obligation to consider subsequent request or representation for revocation with same speed and expedition which is expected of the authority while deciding the first representation in discharging of constitutional obligation under Article 22(5) of the Constitution of India. These two observations could have been successfully applied by the learned Counsel representing the respondent only in case the second representation was disposed of. It was open to the State Government to reject the second representation by observing that no fresh or additional ground was disclosed in the same and identical grounds taken in the first representation dated 8.6.1998 were considered and disposed of. If that would have been the situation then even on ground of delay in disposal of second representation the impugned order could not be assailed because in that event same expedition was not required from the State Government in dealing with second representation as was required in deciding the first representation. However, in the case before me the second representation was not at all considered by the State Government which is clear from the second counter Affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat. In Para : 2 of his Counter Affidavit he has deposed that the representation dated 7.7.1998 was made by the Advocate of the detenu. It was addressed to the Home Minister which was received on 17.7.1998. It was forwarded to the Home Department on 27.7.1998. Since Authority letter and Vakalatnama was not forwarded by the Advocate and besides it was not bearing the signature/thumb impression of the detenu the said representation was returned to the advocate under covering letter dated 27.7.1998. Thus, the second representation has not all been considered till date on merit by the State Government. This attitude of the State Government and like attitude of the concerned Officer of the Government was not approved by the Apex Court in the case of Balchand Chorasias v/s. Union of India, reported in AIR 1978 SC 297. Thus,

non-consideration of second representation sent by the detenu through his Advocate has rendered detention of the detenu illegal which calls for setting aside the detention order.

5. The second contention has been that by the so called activity of the petitioner public order was not disturbed and that the petitioner is not a dangerous person. I do not find any substance in the contention that the petitioner is not a dangerous person. Dangerous person is defined under Section 2(c) of the PASA Act which obliges that there should be repetition of criminal activity by the petitioner. Repetition of criminal activity is indicated from three registered criminal cases under various sections of the Indian Penal Code which are punishable under Chapter : XVI of the I.P.CODE. In addition to this other such repetitions are alleged in second para of the detention order. Besides this, two confidential witnesses also disclosed similar commission of offences under the Indian Penal Code. Thus, the petitioner was rightly considered to be dangerous person.

6. A dangerous person cannot be detained under PASA unless his activities are prejudicial for maintenance of public order as provided under Section 3(4) of the PASA Act. A deeming provision as to when dangerous person will be said to have disturbed public order is to be found in Explanation to Sub.Section 4 of Section 3 of the PASA Act. The distinction between law and order and public order need not be high lighted in detail. Suffice it to say that if the activities of the petitioner were such which had potentiality of disturbing public order in the locality or even tempo of the life of the society or locality then it can be said that public order was disturbed. Merely because criminal offences were committed by the petitioner it cannot be said that those activities were prejudicial for maintenance of public order. For deciding whether the activities of the petitioner were prejudicial for maintenance of public order or not some thing has been alleged in general in Para : 2 of the grounds of detention, but these general allegations cannot be considered because the date, time and place when such offences were committed by the petitioner are not disclosed in this para.

7. So far as three registered offences under various sections of the Indian Penal Code are concerned the factual aspect has not been disclosed in the grounds of detention that these offences were committed in such high handed manner that even tempo of life of the community

was disturbed at the place where such offences were committed by the petitioner or that the peace and tranquility of the said locality were disturbed. For commission of these offences the petitioner was booked under various sections of the Indian Penal Code. The learned A.G.P., however, contended that despite the fact that the petitioner was enlarged on bail in CR No.179/97 and 269/97 he committed third offence CR No.195/98. Even if this contention is accepted it goes no more beyond indicating repetition of criminal offences by the petitioner, but there is no material to show that when the offence at CR No.195/98 was committed, the situation from the incident was prejudicial for maintenance of public order. Thus, these three cases also cannot be pressed in service against the petitioner for observing that his activities were prejudicial for maintenance of public order.

8. Then remains the statements of two confidential witnesses. The first witness stated about the incident dated 7.5.1998, but the place where this incident took place is vaguely described as land of the witness. The locality, village, Taluka, etc. where this incident took place has not been disclosed in the grounds of detention. The narration of fact given by this witness clearly indicates that the activity of the petitioner did not disturb public order and the public at large was not affected. Simply because the knife was touched on the person of the witness without causing injury to him and further because Rs.1800/- were taken from the pocket of the witness it cannot be said that public order was disturbed. Even if some persons reached the scene of occurrence to save the witness and the petitioner ran towards them in the company of his companion with knife it cannot be said that situation prejudicial for maintenance of public order was created. On similar facts when the petitioner threatened the witness with revolver and ran towards the members of the public showing revolver the Apex Court did not consider that the activity was prejudicial for maintenance of public order in the case of *Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta, Commissioner of Police*, reported in 1995 (2) G.L.R. 1268.

9. Similarly incident dated 10.5.1998 which took place at 8.00 p.m. also cannot be said to have disturbed the public order near Tirupati complex where the incident took place. However, if the companion of the petitioner ran towards people showing Gupti to them it cannot be said that the public order was disturbed.

10. Thus, for the reasons stated above the activities of the petitioner were not prejudicial for maintenance of public order and as such his detention is renedered illegal.

11. For the reasons stated above the detention order cannot be sustained. The writ petition, therefore, succeed and is hereby allowed. The impugned order of detention dated 26.5.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

(D. C. Srivastava, J.)

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